

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DATE FILED: Feb. 15, 2012

TODD THOMPSON AND MELODY
THOMPSON,

Plaintiffs,

v.

ZIMMER, INC.; ZIMMER HOLDINGS, INC.;
and ZIMMER ORTHOPAEDIC SURGICAL
PRODUCTS, INC.,

Defendants.

Civil Action No. 1:11-cv-7749

and Order
**JOINT STIPULATION TO WITHDRAW DEFENDANTS'
MOTION TO DISMISS, OR IN THE ALTERNATIVE, TO TRANSFER**

The plaintiffs, Todd Thompson and Melody Thompson ("Plaintiffs"), and the defendants, Zimmer, Inc., Zimmer Holdings, Inc., and Zimmer Surgical, Inc., f/k/a Zimmer Orthopaedic Surgical Products, Inc. ("Defendants") (collectively, the "Parties"), hereby stipulate to withdrawal of the Defendants' Motion To Dismiss, Or In the Alternative, To Transfer (Doc. 7) (the "Motion To Dismiss Or Transfer").

1. This products liability action was filed on October 31, 2011.
2. On December 16, 2011, Defendants filed the Motion To Dismiss Or Transfer pursuant to Federal Rule Of Civil Procedure 12(b)(3) and 28 U.S.C. §§ 1391(a) and 1406(a), seeking to dismiss or, in the alternative, to transfer this action to the Northern District Of Indiana.
3. On February 7, 2012, the Judicial Panel on Multidistrict Litigation issued an order in response to the Defendants' motion to vacate, in part, the JPML's conditional orders

transferring certain actions to MDL No. 2272. A copy of the order is attached. *See In re Zimmer Nexgen Knee Implant Prods. Liab. Litig.*, MDL No. 2272, Dkt. No. 349 (J.P.M.L. Feb. 7, 2012).

5. In light of the JPML order, the Parties now agree that Defendants' present Motion To Dismiss Or Transfer should be withdrawn without prejudice at this time.

6. The Parties further agree that this action will be subject to a Conditional Transfer Order transferring the matter to MDL 2272 pending in the Northern District of Illinois. The action was included on Conditional Transfer Order 25 ("CTO-25") in MDL 2272, which the JPML issued on December 5, 2011. (*See* MDL 2272, Dkt. No. 261.) Defendants filed a Motion To Vacate CTO-25 In Part on December 27, 2011. (*See* MDL 2272, Dkt. No. 292.) However, as a result of the JPML's order denying prior, similar motions to vacate, Defendants will withdraw the Motion To Vacate CTO-25 In Part. Once the Motion To Vacate CTO-25 In Part is withdrawn, the JPML will likely finalize CTO-25 and promptly transfer this action to MDL 2272.

7. The Parties further agree Defendants' venue objections are not waived by virtue of Defendants' withdrawal of the Motion, and that Defendants' may renew them after this matter is transferred to MDL 2272 or after the matter is remanded back to this Court at the conclusion of consolidated pretrial proceedings.

WHEREFORE, the Parties respectfully request that the Court withdraw the Defendants' Motion To Dismiss Or Transfer.

WEITZ & LUXENBERG, P.C.

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*Attorney for the defendants, Zimmer, Inc.,
Zimmer Holdings, Inc., and Zimmer Surgical,
Inc., f/k/a Zimmer Orthopaedic Surgical
Products, Inc.*

SO ORDERED:

[Signature]
U.S.D.J.

2/15/12

[Signature]